

REMARKS

Claims 1, 3, 4, 6, 8, 10, 11, 13, 14, 16, 18, 20, 21, 26, 28, 30, and 31 are currently pending in the subject application and are presently under consideration. Claims 1, 3, 4, 6, 8, 11, 13, 14, 16, 18, 26, 28, and 31 have been amended as shown on pages 2-8 of the Reply. No new matter has been added.

Applicants' representative thanks the Examiner for indicating that independent claim 21 stands allowed. The Examiner has rejected claims 1, 3, 4, 6, 8, 10, 11, 13, 14, 16, 18, 20, 26, 28, 30, and 31. While Applicants' representative disagrees that the cited references render obvious any of the subject claims, in order to expedite prosecution, independent claims 1, 6, 11, 16, 26, and 31 have been amended herein (in view of the Examiner's indication that independent claim 21 stands allowed), so that all claims presently under consideration are in condition for allowance, as shown on pages 2-8 of the Reply.

Applicants' representative also thanks the Examiner for the courtesies extended during the telephonic conference on February 7, 2008, with Francis Dunn. During the telephonic conference, there was discussion regarding overcoming the rejection of the subject claims that currently stand rejected, including discussion regarding potential amendments to certain independent claims, in view of the Examiner indicating that independent claim 21 stands allowed, in order to gain additional allowable matter.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1, 3-4, 6, 8, and 10 Under 35 U.S.C. § 103(a)

Claims 1, 3-4, 6, 8, and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dubal (U.S. 6,976,196) in view of Bishop *et al.* (U.S. 6,049,798). This rejection should be withdrawn for at least the following reason. Dubal and Bishop *et al.*, either alone or in combination, do not disclose, teach, or suggest each and every element of the subject claims. The Examiner indicated that independent claim 21 stands allowed, and independent claim 1, as amended, includes elements similar to independent claim 21. Further, independent claim 6, while not including a performance component or a monitoring component, includes acts that are similar to the elements of independent claim 1. Dubal fails to teach or suggest the claimed subject matter. Rather, Dubal relates to a system that performs diagnostics without system

crashes. Resource conditions are continuously monitored by querying performance data. If the system determines adequate resources are available, diagnostic routines are run. Further, Bishop *et al.* fails to teach or suggest the claimed subject matter. Instead, Bishop *et al.* teaches a system monitor that captures internal resource utilization of a computer. The system captures data in real time, but the overall effect on the system is reduced to a minimum by specialized device drivers.

For at least the foregoing reasons, the cited references, either alone or in combination, do not disclose, teach, or suggest each and every element of the subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn with respect to independent claims 1 and 6 (and associated dependent claims 3-4, 8 and 10).

II. Rejection of Claims 11, 13-14, 16, 18, and 20 Under 35 U.S.C. § 102(b)

Claims 11, 13-14, 16, 18, and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kiel *et al.* (U.S. 4,905,171). This rejection should be withdrawn for at least the following reason. Kiel *et al.* does not disclose each and every element of the subject claims. The Examiner indicated that independent claim 21 stands allowed, and independent claim 11, as amended, includes elements similar to independent claim 21. Further, amended independent claim 16, although not containing a performance component or a monitoring component, includes acts that are similar to the elements of independent claim 1. Keil *et al.* fails to disclose the distinctive aspects of the claimed subject matter. Rather, Keil *et al.* discloses a system that locates performance bottlenecks, where a host monitors data and collects the data in counters that reside within workstation controllers. For at least the foregoing reasons, the Kiel *et al.* does not disclose each and every element of the subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn with respect to independent claims 11 and 16 (and associated dependent claims 13-14, 18, and 20).

III. Rejection of Claims 1 and 6 Under 35 U.S.C. § 103(a)

Claims 1 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Berry *et al.* (U.S. 5,872,913) in view of Dubal. This rejection should be withdrawn for at least the following reason. Berry *et al.* and Dubal, either alone or in combination, do not disclose, teach, or suggest each and every element of the subject claims. The Examiner indicated that

independent claim 21 stands allowed, and independent claim 1, as amended, includes elements similar to independent claim 21. Further, independent claim 6, while not including a performance component or a monitoring component, includes acts that are similar to the elements of independent claim 1. For at least the foregoing reasons, the cited references, either alone or in combination, do not disclose, teach, or suggest each and every element of the subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn with respect to independent claims 1 and 6.

IV. Rejection of Claims 11 and 16 Under 35 U.S.C. § 103(a)

Claims 11 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Berry et al.* in view of *Bishop et al.* It is respectfully requested that this rejection be withdrawn for at least the following reason. *Berry et al.* and *Bishop et al.*, either alone or in combination, do not disclose, teach, or suggest each and every element of the subject claims. The Examiner indicated that independent claim 21 stands allowed, and amended independent claim 11 includes elements similar to independent claim 21. Further, independent claim 16, although not including a performance component or monitoring component, includes acts that are similar to the elements of independent claim 1. For at least the foregoing reasons, *Berry et al.* in view of *Bishop et al.*, either alone or in combination, do not disclose, teach, or suggest each and every element of the subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn with respect to independent claims 11 and 16.

V. Rejection of Claims 26, 28, and 30-31 Under 35 U.S.C. § 103(a)

Claims 26, 28, and 30-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Berc et al.* in view of *Dubal* and in further view of *Bishop et al.* It is respectfully requested that this rejection be withdrawn for at least the following reason. *Berc et al.*, *Dubal*, and *Bishop et al.*, either alone or in combination, do not disclose, teach, or suggest each and every element of the subject claims. The Examiner indicated that independent claim 21 stands allowed, and amended independent claim 26 and amended independent claim 31, although not containing a performance component or monitoring component, include acts or elements similar to independent claim 21. For at least the foregoing reasons, *Berc et al.*, *Dubal*, and *Bishop et al.*, either alone or in combination, do not disclose, teach, or suggest each and every element of the

subject claims. Accordingly, it is respectfully requested that this rejection be withdrawn with respect to independent claims 26 and 32 (and associated claims 28 and 30).

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP547US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

AMIN, TUROCY & CALVIN, LLP

/Himanshu S. Amin/

Himanshu S. Amin

Reg. No. 40,894

AMIN, TUROCY & CALVIN, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731